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10/753,817

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Rhonda L. Childress

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04/12/2010

IBM CORP (YA)

C/O YEE & ASSOCIATES PC

P.O. BOX 802333

DALLAS, TX 75380

EXAMINER

ANWARI, MACEEH

ART UNIT

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* RHONDA L. CHILDRESS, DAVID BRUCE KUMHYR,  
and NEIL RAYMOND PENNELL

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Appeal 2010-001458  
Application 10/753,817  
Technology Center 2400

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Mailed: April 12, 2010

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Before DALE M. SHAW, *Division 2 Support Administrator*

ORDER REMANDING APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on November 16, 2009. A Docketing Notice was mailed and Appeal Number 2010-001458 was assigned on December 1, 2009. A review of the application has revealed that the application was not ready for an appeal. Accordingly, the application is herewith being

remanded to the Examiner. The matter requiring attention is identified below.

Claim 11 of the instant application contains functional language that may be indefinite under 35 U.S.C. § 112, second paragraph. *See Aristocrat Techs. Austl. Pty Ltd. v. Int'l Game Tech.*, 521 F.3d 1328 (Fed Cir. 2008); *Ex parte Rodriguez*, 92 USPQ2d 1395 (BPAI 2009). On September 2, 2008, the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled “Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph,” located at: [http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section\\_112\\_6th\\_09\\_02\\_2008.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf). Thus, there is a question as to whether claim 11, and the claims which depend upon this claim, meets the requirements of being definite under 35 U.S.C. § 112, second paragraph.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claim 11, and the claims which depend upon this claim, meets the requirements of 35 U.S.C. § 112, second paragraph.

If there are any questions pertaining to this order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

babc

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